IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15855 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVINDBHAI ALIAS MUNNA DINESHBHAI DHODIYA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 15855 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 20.10.2003 passed by respondent No.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that one prohibition offence was registered before East Prohibition police station C.R. No.1040/2003 dated 30.8.2003 relating to offences punishable under sections 66(b), 65 and section 81 of the Bombay Prohibition Act, 1949. It was alleged against the petitioner that two witnesses had given statements against the petitioner whose names were not disclosed to the detenu. On the strength of the aforesaid solitary registered offence and two unregistered cases, the petitioner was detained by respondent no.1.

3. The petitionerhas challenged the impugned order on various grounds.

4. On receiving the petition, rule was issued and Ms.P B Sheth, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

5. The Learned Advocate for the petitioner has contended that statements of two unnamed witnesses considered by the detaining authority have been supplied to the petitioner, but names of those witnesses have not been disclosed. It is her argument that with a view to observe the principle of natural justice, names of unnamed witnesses ought to have been disclosed to the petitioner. At this stage, the learned AGP has contended that the detaining authority has a power of privilege to keep the names away from the petitioner in view of the provisions made in section 9(2) of the said Act. She has, therefore, contended that the petitioner was not entitled to get the names of the said witnesses. It is true that under section 9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of unnamed witnesses from the notice of the petitioner. At the same time, in order to claim the said privilege, there ought to be some credible material on the basis of which the said power of privilege can be exercised by the said authority. It is true that as per the records, the detaining authority had verified the statements of witnesses referred to above. However, it is not noticed that the detaining authority had further

considered form the records that the fear expressed by the said witnesses was correct and genuine. There appears to be no material before the detaining authority to come to a finding that the fear expressed by the witnesses, during the course of their statements, was real and genuine.

6. In order to substantiate the said argument, we may refer to a decision in the case of Kishore Naginbhai Parmar v. State of Gujarat & ors, reported in 2000(4) GLR 3236. There the detaining authority had claimed power of privilege under section 9(2) of the said Act. After considering many decisions, this Court in the above matter, came to a conclusion that, it cannot be said that neither the grounds of detention or the affidavit-in-reply filed by the detaining authority disclose the grounds and reasons which were considered by the detaining authority for exercising powers under section 9(2) of the said Act. In that view of the matter, if the names of the witnesses have not been disclosed and if the power of privilege under section 9(2) of the said Act has been claimed and if there was no material before the detaining authority for claiming such a finding about the correctness and genuineness with respect to the fear expressed by the witnesses and if that is not done, the names of the witnesses were certainly required to be supplied to the detenu. In other words, if the power of privilege has not been properly exercised and if names of witnesses have not been disclosed then in that event, the petitioner would be deprived of his valuable constitutional right to make effective representation under Article 22 (5) of the Constitution of India whhich goes to the root of the detention order.

7. So far as the registered offences are concerned, the grounds for detention at Annexure 'B' at page 16 show that a solitary offence under Bombay Prohibition Act was registered against the petitioner. It would be very difficult to accept that registration of a solitary offence under the said Act would lead to a threat to public order or public health. In that view of the matter, even on this ground the order of detention cannot be sustained in the eye of law.

6. For the foregoing reasons this petition is allowed. The impugned order dated 20.10.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs.

D.S. permitted.

[D P Buch, J.]
msp